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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION

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DOCKET NO. S-3047A-97-0000

JIM IRVIN
Commissioner- Chairman
RENZ D. JENNINGS
Commissioner
CARL J. KUNASEK
Commissioner

In the matter of:

RONALD H. WEINER dba RON WEINER
ASSOCIATES
11198 North 129th Way
Scottsdale, AZ 85259
CRD #2039529,

DOUGLAS DEAN SACKETT
1040 W. Oregon Ave.
Klamath Falls, OR 97601
CRD #1006917

Respondents.

MOTION TO ALLOW
TELEPHONIC TESTIMONY

The Securities Division (the "Division") of the Arizona Corporation Commission ("Commission") hereby moves for leave to allow telephonic testimony during the scheduled hearing in this matter, as supported by the accompanying Memorandum of Points and Authorities.

RESPECTFULLY submitted this 15th day of April, 1998.GRANT WOODS, Attorney General
Consumer Protection and Advocacy Section

DOCKETED

APR 15 1998

Hnd

By:

Pamela T. Johnson

PAMELA T. JOHNSON
Special Assistant Attorney General
NORMA B. MARTENS
Assistant Attorney General
Attorneys for the Securities
Division of the Arizona
Corporation Commission

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

The hearing in this matter is currently set to commence on May 4, 1998. The Division anticipates calling Thomas G. Zielinski, Vice President, Compliance Officer for Securities America, Inc., as a witness. Mr. Zielinski can provide testimony probative of certain of the Division's allegations in this matter of a factual nature, for which there appears to be no dispute and for which the credibility of the witness is not an issue. Mr. Zielinski will testify regarding Respondent Weiner's association with Securities America, Inc. and Securities America, Inc.'s lack of knowledge or approval of any private securities transactions engaged in by Respondent Weiner. Mr. Zielinski lives in Omaha, Nebraska. Travel to Arizona to attend the hearing as a witness would be unduly burdensome, costly and impractical in view of the scope of the testimony anticipated from Mr. Zielinski.

II. ARGUMENT

The purpose of administrative proceedings is to provide for the fair, speedy and cost effective resolution of administratively justiciable matters. To effectuate that purpose, the legislature provided for streamlined proceedings and relaxed application of the formal rules of evidence. Specifically, A.R.S. § 41-1062(A)(1) provides for informality in the conduct of contested cases. The evidence submitted in an administrative hearing need not rise to the level of formality required in a judicial proceeding, as long as it is "substantial, reliable and probative." The Commission's rules of practice and procedure ensure just and speedy determination of all matters presented to it for consideration. *See, e.g.,* A.A.C. R-14-30-101(B); R14-3-109(K). Allowing Mr. Zielinski to testify by telephone retains all indicia of reliability and preserves Respondent Weiner's rights to cross-examination.

1 Courts in other states have acknowledged that telephonic testimony in administrative and
2 civil proceedings is permissible and consistent with the requirements of procedural due process.
3 See *Babcock v. Employment Division*, 72 Or. App. 486, 696 P.2d 19 (1985) (court approved
4 Oregon Employment Division's procedure to conduct entire hearing telephonically); *W.J.C. v.*
5 *County of Vilas*, 124 Wis. 2d 238, 369 N.W. 2d 162 (1985) (court permitted telephonic expert
6 testimony in commitment hearing). Both of these courts concluded that fundamental fairness
7 weighed in favor of permitting telephonic testimony.

8 III. CONCLUSION

9
10 Permitting Mr. Zielinski to testify telephonically at the hearing does not compromise
11 Respondent Weiner's due process rights. Therefore, the Division respectfully requests that Mr.
12 Zielinski be permitted to give telephonic testimony in this matter.

13 DATED this 15th day of April, 1998.

14 GRANT WOODS, Attorney General
15 Consumer Protection and Advocacy Section

16
17 By: Pamela T. Johnson

18 PAMELA T. JOHNSON
19 Special Assistant Attorney General
20 NORMA B. MARTENS
21 Assistant Attorney General
22 Attorneys for the Securities
23 Division of the Arizona
24 Corporation Commission

25 ORIGINAL AND TEN COPIES the foregoing
26 filed this 15th day of April, 1998, with:

27 Docket Control
28 Arizona Corporation Commission
29 1200 West Washington Street
30 Phoenix, AZ 85007

Copy of the foregoing faxed and mailed
this 14th day of April, 1998, to:

Ronald H. Weiner
11198 North 129th Way
Scottsdale, AZ 85259

Ronald H. Weiner
10250 East Mountain View #101
Scottsdale, AZ 85258

Douglas Dean Sackett
2555 NW Highland Unit J
Grants Pass, OR 97256

Douglas Dean Sackett
P.O. Box 534
Grants Pass, OR 97258

RD